IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.16904 OF 2007
AND
M.P.NOS.1 AND 2 OF 2007

C.Krishnan .. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to
the Government,
Home Transport-II Department,
Fort St. George,
Chennai-600 009.
2.The Transport Commissioner,
O/o.The Transport Commissioner,
Chepauk,
Chennai-600 005 .. Respondents

This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus for the relief as stated therein.

For Petitioner : Mr.G.Ethirajulu
For Respondents: Mr.I.Paranthaman, AGP

ORDER

Seeking writ of certiorarified mandamus to quash the proceedings made in Memo R.No.75848/V4/05, dated 4.5.2006 passed by the second respondent and also to forbear the respondents from proceeding with the enquiry in pursuant to the aforesaid charge memo, this writ petition has been brought forth by the petitioner, who is the Superintendent attached to the Transport Department, Tamil Nadu.

2.The short facts necessary for the disposal of this writ petition could be stated thus:

The petitioner, who was originally appointed as the Junior Assistant in the year 1986, was promoted as the Superintendent from 13.3.2002 and he was posted at Motor Vehicle Inspector Office, Hosur. While he was doing so, on 28.11.2005, there was a surprise inspection by the higher-ups and certain irregularities were noticed and a charge memo was also issued. The Enquiry Officer was appointed and that Enquiry Officer retired in the month of February, 2007 and yet, no one was appointed as Enquiry Officer and the matter is pending and it has not proceeded with and hence, all the promotions have become delayed. Further, the charges found in the charge

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memo did not attract anything to be proceeded under Rule 17(b) and further, no major punishment could be awarded and under these circumstances, it would come only under Rule 17(a) and for the reasons known to the department, nobody was appointed as the Enquiry Officer and the matter is pending yet. The petitioner is due to attain superannuation in the month of February, 2008. Under these circumstances, the proceedings have got to be quashed.

3.The court heard the learned counsel for the respondents. According to him, the Enquiry Officer is to be appointed. This charge memo was issued only on 4.5.2006 and due to the retirement of the Enquiry Officer, a new one has got to be appointed, which has got to be done shortly by the department. Apart from that, even a reading of the charges found in the memo would clearly indicate that they are rightly framed under Rule 17(b) and there is no question of attracting Rule 17(a), in view of the factual position that arise. Under these circumstances, the writ petition has got to be dismissed.

4.The court has paid its anxious consideration on the submissions made.

5.It is not in controversy that the petitioner herein is the Superintendent attached to the Motor Vehicle Inspector Office, Hosur. There was a surprise inspection made on 28.11.2005. It is pertinent to point out that though the inspection was made in the month of November, 2005, charge memo was issued on 4.5.2006. At this juncture, it is to be further pointed out that the Enquiry Officer was appointed earlier and he also retired in the month of February, 2007. Under these circumstances, no one is yet appointed as the Enquiry Officer for the past 6 months. The court is unable to see any reason as to why no one was appointed as the Enquiry Officer and why the matter is pending for the past two years on the charge memo, while the inspection was made on 28.11.2005, the charge memo was issued on 4.5.2006 and thereafter, the Enquiry Officer retired in the month of February, 2007.

6.Apart from that, in the instant case, the charges levelled against the petitioner, which are incorporated in the memo, are placed in the hands of the court and they are noticed by the court. There were three charges. Insofar as the first charge, according to the department, eight brokers were found inside the office and they were also having money of Rs.21,165/-, which was seized from them. The second charge was that an unclaimed amount of Rs.3370/- was found and seized within the office premises of motor Vehicle Inspector, Hosur and the third charge was that there was shortage of Rs.348/- noticed in the closing cash balance. So far as the charge No.2 was concerned, wherefrom Rs.3370/- was actually seized is not made known and it was mentioned that it was seized within the Motor Vehicle Inspector office. So far as the third charge was concerned, there was shortage of Rs.348/- noticed and it can be attributed only to the Cashier.

7.According to the learned counsel for the State, there were eight brokers inside the office and from whom, an unaccounted money for a sum of Rs.21,165/- was recovered. At this juncture, it is pertinent to point out that as per the guidelines for deciding the charges framed under Rule 17 (b), there is irregularity or negligence in the discharge of official duties with a dishonest motive. In the instant case, what are all stated

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was only eight brokers were found inside the office and from whom the amount was recovered. Now, the question would be whether there was any dishonest motive, which could be attributed. The court is of the considered opinion that so long as any dishonest motive is not noticed, even though there was irregularity or negligence spoken out, no question of framing charges under Rule 17(b) would arise. Thus, the charges, what were found above, were not factually available to frame charges under Rule 17(b). Under these circumstances, it would attract Rule 17(a) only.

8.Now, pendency of proceedings for a period of two years is noticed and the petitioner is also due to retire in the month of February, 2008. This would be indicative of the fact that pendency of proceedings itself would be taken place till retirement. Under these circumstances, the court is of the considered opinion that the charges, what are found, under the factual position, would attract only Rule 17(a) and not Rule 17(b). Apart from that, it is a fit case where if the charges would attract only Rule 17(a), there cannot be any impediment for giving promotion to him and it could be considered by the Department. At this juncture, it would be fit and proper to issue a direction to the department to proceed with the enquiry by making proper charge and dispose of the same within a period of three months from the date of disposal of this writ petition. The court also feels that once retirement would take place in the month of February, 2008, the Department is also directed to consider his promotion also. With the above observations and directions, this writ petition is disposed of. No costs. Consequently, the connected MPs are closed.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

vvk

To

1.The Secretary to the Government,
The State of Tamil Nadu,
Home Transport-II Department,
Fort St. George,
Chennai-600 009.

2.The Transport Commissioner,
O/o.The Transport Commissioner,
Chepauk,
Chennai-600 005.

+ 1 cc to Mr.G.Ethirajalu Advocate SR.NO.54741

MA(CO)
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